

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **October 13, 2016**

4 **PRESENT:** Daniel Schneider; Clayton Platt; William Larrow; George Neuwirt

5 **ABSENT:** Aaron Simpson; Roger Landry, Zoning Administrator

6 **ALSO PRESENT:** See Sign-in Sheet

7 Vice Chair Schneider called the meeting to order at 7:00 pm.

8 **ELECTION OF OFFICERS**

9 The Board talked about electing officers without a full Board.

10 Mr. Larrow made a motion to not elect officers until there is a full Board. Mr. Platt seconded the
11 motion. The motion passed unanimously.

12 **CASE #16-25: PARCEL ID: 0211-0018-0000: REVIEW JUSTIFICATION REQUEST FOR REHEARING OF**
13 **CASE #16-19 DENIED ON SEPTEMBER 8, 2016. ALBEE AUTOMOTIVE, 962 ROUTE 11.**

14 Vice Chair Schneider explained that the applicants have requested that the case be postponed to
15 October 25th because their attorney cannot be at this meeting to represent them.

16 Mr. Larrow made a motion that Case #16-19 for the administrative appeal be postponed until Tuesday,
17 October 25th. Mr. Neuwirt seconded the motion. Mr. Platt made a motion to amend the motion that
18 Case #16-25, the rehearing of Case #16-19 be postponed until October 25th at 7:00. Mr. Larrow
19 seconded the amendment. The motion passed unanimously.

20 **CASE #16-31: PARCEL ID: 0126-0023-0000: ADMINISTRATIVE APPEAL: SEEKING APPROVAL OF**
21 **APPEALING THE TOWN OF SUNAPEE SELECTMEN'S APPROVAL OF BUILDING PERMIT #3516, 23 OLD**
22 **NORCROSS LN, MICHAEL JESANIS.**

23 Vice Chair Schneider said that this case has been requested to be postponed because the Board of
24 Selectmen have appointed Mr. Landry as their agent for this case and he was not able to be at this
25 meeting. Vice Chair Schneider continued that Mr. Jesanis was at the meeting before it began because
26 he was not informed of the continuance.

27 Mr. Platt made a motion to postpone Case #16-31, the Administrative Appeal, until October 25, 2016.
28 Mr. Neuwirt seconded the motion. The motion passed unanimously.

29 **CASE #16-26: PARCEL ID: 0149-0029-0000: SEEKING A SPECIAL EXCEPTION AS PER ARTICLE III,**
30 **SECTION 3.50(I) (3) TO ALLOW REPLACING OF A PRE-EXISTING NON-CONFORMING STRUCTURE WITH**
31 **A NEW STRUCTURE HAVING A HIGHER ROOF LINE. REGIS CHILTON, LLC, 769 ROUTE 103.**

32 Vice Chair Schneider explained that there are only four Board members at the meeting and the
33 applicants will need three out of four votes for approval. The applicants may choose to defer until they
34 have a full Board if they would like to do so. The applicants decided to proceed with the case.

35 Pierre Bedard, a surveyor, and Peg and Ward Bennett, the owners of Regis Chilton, LLC, presented the
36 merits of the case.

37 Mr. Bedard explained that the property is 0.71 in size and much of the property is within the former
38 Concord and Claremont Railroad right of way. The property has a two bedroom cottage and a two
39 bedroom dilapidated trailer with associated additions and sheds. The proposal is to replace the
40 dilapidated trailer with a barn that will include vehicle storage and a bunkhouse. Mr. Bedard said that
41 he has a letter from the Zoning Administrator dated July 8, 2014, and building plans that were submitted
42 with the application. The current structure is old and in poor condition, it is an eyesore along a major
43 thoroughfare of the State within the boundaries of the Town of Sunapee.

44 Mr. Bedard went over the criteria for a Special Exception for Article III, Section 3.50. The proposed
45 structure will be placed within the same footprint as the existing structure. There will be no horizontal
46 increase to the footprint. The existing shed and part of the existing structure footprint, totaling
47 approximately 200 sq ft, will be eliminated. The proposal received a Shoreland Impact Permit #2016-
48 01390 on July 11, 2016. The existing structure is a residential dwelling unit and is 12 ft 3 in in height.
49 The new structure will have the appearance of a traditional barn, the main part of the structure will be
50 less than 24 ft in total height, no more than 10 ft additional height from the existing structure. No
51 abutter impacts are anticipated because the improvement will be an asset to the neighborhood. The
52 property has received septic construction approval CA2014118535 and operational approval on August
53 5, 2014 for a four bedroom capacity 600 GPD septic system, this replacement is consistent with the
54 spirit of the Ordinance.

55 Vice Chair Schneider asked and Mr. Bedard confirmed that the structure is not a dwelling unit, it will be
56 a bunkhouse and vehicle storage, like a garage. It will not have any cooking facilities.

57 Mr. Larrow asked for the approval number for the Shoreland Permit. Mr. Bedard said that it is
58 Shoreland Permit #2016-01390 and he believes that he submitted a copy of it with the application.

59 Mr. Larrow said that there was a letter from Mr. Landry dated July 8, 2014 that talked about the septic
60 plan dated July 8, 2014 that was designed to accommodate this use only with no kitchen facilities or a
61 second dwelling unit. As specified in the current Zoning the mobile home may be replaced in "like kind"
62 in the same footprint. Mr. Larrow asked if they are interpreting "like kind" to be a barn. Mr. Bedard
63 said that they are using the same footprint, which is part of the reason that they are asking for the
64 Special Exception as they are increasing the height of the roof. Mr. Larrow asked and Mr. Bedard
65 confirmed that they are not doing what is in the letter from Mr. Landry, which is why they are asking for
66 the Special Exception.

67 Vice Chair Schneider asked and Mr. Bedard said that they are raising the roof to less than 24 ft. David
68 Hamilton, the builder, said that the current structure height is 12 ft 3 in and they will be adding 10 ft,

69 which is allowed in the Zoning, so the total overall height will be 22 ft 3 in, including the cupola. Mr.
70 Neuwirt said that he thought the Regulation says that the building is supposed to be less than 24 ft to
71 start and then a maximum 10 ft increased additional height. Mr. Larrow said that the existing structure
72 should be less than 24 ft in height and the enlarged or replacement structure will be no more than 10 ft
73 additional in height to the pre-existing structure. There was further discussion regarding this matter.

74 Mr. Platt asked if there is expansion onto the footprint of the decks to create enclosed living space. Mrs.
75 Bennett said that the porch that faces the back will be enclosed to create a mudroom before entering
76 the bunkhouse. Half of the barn, 14 ft by 35ft, which is now heated and enclosed space, is going to be a
77 concrete floor and just a garage. They were hoping if they gave back all that other heated space that
78 they could add a smaller room with heat.

79 Mr. Larrow asked if they will be doing anything with the foundation. Mr. Hamilton said that the building
80 will be on a new foundation but it will be on the footprint of the trailer; the only foundations currently
81 are for the decks.

82 Mr. Neuwirt said that it is hard to figure out without a site plan and the Board was given a copy of the
83 Shoreland Plan which shows the existing and proposed conditions. There was a discussion regarding the
84 location of the trailer, the shed, and the decks.

85 Mr. Larrow asked and it was confirmed that the new structure will not encroach any further on the lake.

86 There was a discussion regarding a prior meeting and the septic system.

87 Mr. Neuwirt asked and it was confirmed that the existing deck on the side of the house facing the road,
88 is being enclosed into the new mudroom. They are adding a new open deck from the right hand side of
89 that enclosed portion, almost to the end of the new building. Vice Chair Schneider asked and Mrs.
90 Bennett said that the stairs for the deck are new. Mr. Hamilton gave a copy of another plan to the
91 Board and explained where the enclosed and open deck and the stairs will be located. Mr. Neuwirt
92 asked about the small piece that they are adding. Mr. Larrow said that if they are adding to the deck
93 they will not be in the same footprint and it doesn't matter if they are giving back square footage. Mr.
94 Bedard said that they are giving up about 200 sq ft. Mr. Hamilton said that he thinks that they are giving
95 up substantially more square footage than they will be adding, which is an 8 ft x 8 ft deck, or 64 sq ft.
96 Mr. Hamilton said that because they had to do the Shoreland Permit, the applicants felt as though the
97 reduction of the square footage on the water side would be better and then they could add the deck.
98 Mr. Neuwirt said that most of the added on deck sits in the 50 ft setback. Mr. Larrow asked if the
99 Shoreland Permit is based on the latest calculation of what they want to build. Mrs. Bennett confirmed
100 that the plan given to the Board is what they got approved. Mr. Platt said that the Zoning Ordinance
101 allows a 32 sq ft open platform and stairs as per Page 53, #5, the definition of a minor structure. The
102 criteria for the Special Exception says "such enlargement or replacement will not increase the horizontal
103 dimensions of the structure unless such horizontal increase would ordinarily be permitted by the
104 Ordinance." The Ordinance ordinarily allows 32 sq ft of deck and stairs, which cannot be more than 4 ft
105 off the ground and are used to access the structure. Mr. Neuwirt asked if the 32 sq ft could be
106 considered the balance remaining as to the enlargement. Mr. Larrow said that it sounds like it would

107 be. Mr. Platt said that he has a problem with a swap for a Special Exception because for a Special
108 Exception you either meet the criteria or you don't. Mrs. Bennett asked if it would comply if they had a
109 32 ft deck rather than the 64 ft deck. Mr. Platt said that it would comply because you are allowed to
110 have a 32 ft deck outside the footprint. Mr. Bedard said that he does not think it would be an issue with
111 the Shoreland Permit as it would be a reduction in the overall square footage and it probably would not
112 need to be resubmitted. Mr. Hamilton said that he thinks that the applicants would be happy to walk
113 out of the meeting with an approval and would be willing to reduce the deck to 32 sq ft. The Board
114 agreed that this made sense. There was further discussion regarding this matter and the Bennetts
115 agreed to reduce the deck to 32 sq ft.

116 Vice Chair Schneider asked if there was anyone in the audience with any questions and there were none
117 so he closed the public input portion of the meeting.

118 Mr. Platt made a motion to approve Case #16-26: Parcel ID: 0149-0029-0000: seeking a Special
119 Exception as per Article III, Section 3.50(i) (3) to allow replacing of a pre-existing non-conforming
120 structure with a new structure having a higher roof line, Regis Chilton, LLC; said approval is conditioned
121 on all construction complying with Shoreland Permit #2016-01390 and that the building will have no
122 kitchen facilities and is limited to two bedrooms and that the proposed deck outside the footprint and
123 the stairs will not exceed 32 sq ft. Mr. Neuwirt seconded the motion. Mr. Larrow asked and Mr.
124 Hamilton said that he'd submit the updated plan to Mr. Landry within the week. The motion passed
125 unanimously.

126 **CASE #16-27: PARCEL ID: 0118-0007-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.10 TO**
127 **INCREASE THE ROOF HEIGHT FROM THE MAXIMUM ALLOWED 25 FT TO 31 FT ON A PRE-EXISTING,**
128 **NON-CONFORMING STRUCTURE REPLACEMENT. DUSTIN ALDRICH, 106 MARY'S RD.**

129 Dustin Aldrich presented the merits of the case.

130 Mr. Aldrich explained that earlier this year he suffered a loss of the residence as a pipe burst and the
131 interior was a total loss as the entire inside had to be mitigated so he would like to replace the structure.
132 Mr. Neuwirt asked if the inside has been mitigated and Mr. Aldrich confirmed that it was done by the
133 insurance company and that it is now not livable.

134 Mr. Aldrich gave copies of a drawing to the Board and explained that he is proposing demolishing the
135 existing structure and putting up a new structure in the same footprint with the same decks and no
136 changes except for the roofline. According to the table of dimensional controls there is a footnote at
137 the bottom that says "if a structure is allowed a reduced side or rear setback due to inadequate lot size,
138 the portion of the structure in the area of reduced setback shall have a maximum height of 25'." Right
139 now he is at 21 ft, so he would qualify for the Special Exception under 3.50 but they are close to the lot
140 line and this footnote requires a Variance.

141 Vice Chair Schneider said that it seems to him that Mr. Aldrich needs a Special Exception to raise the
142 roof and also needs one to have the roof height in the setback higher than 25 ft.

143 Vice Chair Schneider asked if the property has been surveyed so that Mr. Aldrich knows where the
144 setbacks are located. Mr. Aldrich said that he has not had a survey done. Vice Chair Schneider asked
145 how Mr. Aldrich knows how far the roof is from the lot line. Mr. Aldrich said that it is from looking at
146 the pins. Mr. Platt asked and Mr. Aldrich said that they are 1 ft from the lot line in question but he owns
147 the property next to the lot line. Because it is only 1 ft from the lot line the roof must be under 25 ft
148 unless he gets a Variance.

149 Vice Chair Schneider said that even if Mr. Aldrich gets a Variance for 3.10, it seems as though he'd also
150 need a Special Exception under 3.50. Mr. Aldrich explained that Mr. Landry told him that he does not
151 need a Special Exception because the Variance gives him the flexibility to go more than 10 ft if he wants
152 to with approval. Mr. Platt said that he does not think that Mr. Aldrich needs both as the Variance
153 should cover the single action of raising the roof. Mr. Aldrich said that the proposal does not meet the
154 requirements under the Table for Dimensional Controls, otherwise, he would have gone for the Special
155 Exception. Vice Chair Schneider said that he thinks that both a Variance and a Special Exception are
156 needed.

157 Vice Chair Schneider asked and Mr. Aldrich said that the current roof height is 21 ft and the proposed
158 house will be 31 ft. Mr. Aldrich said that one could make the argument about not needing a Special
159 Exception in addition to the Variance because he could have come in and asked for 11 ft under the
160 Variance, which would not qualify under the Special Exception rule but he felt that staying at 10 ft would
161 more fit the spirit of the Ordinance.

162 Vice Chair Schneider said that there are two issues: one is that Mr. Aldrich wants to raise the roof
163 height; and the other is the roof height is being raised within the setback. Mr. Aldrich said that the
164 property is pre-existing and non-conforming so the setback is 15 ft. Vice Chair Schneider said that he
165 still thinks that a Special Exception is needed. Vice Chair Schneider asked what the roof height will be at
166 15 ft and Mr. Aldrich said that it will be 31 ft because that is where the peak is located. Mr. Larrow said
167 that it sounds as though there are two different issues and with the application the Board is only
168 addressing one, which is just the roofline as opposed to the relationship to the lot line. He does not
169 know the conversation Mr. Aldrich had with Mr. Landry so he does not know why it was not addressed.
170 Mr. Aldrich said that he mentioned it to Mr. Landry and was told this was all that he needed because he
171 could ask for a higher roofline than just the 10 ft under the Variance regulations. He is asking to raise
172 the roofline above 25 ft so he is asking for a Variance from the footnote on the Table of Dimensional
173 Controls. Vice Chair Schneider said that the Variance does not take care of the raising of the roof height
174 within the setback.

175 Mr. Platt asked and Mr. Aldrich said that he has not applied for the Shoreland Permit because he
176 wanted to get this Board's approval first. He plans to hook up to Town sewer and there is a drilled well
177 on the property.

178 Vice Chair Schneider asked Mr. Aldrich to go over the criteria for a Variance.

179 Mr. Aldrich said that the proposed use would not diminish surrounding property values because the
180 existing structure is 60 years old, sits on piers, and is in rough condition. The proposed structure would

181 be new, aesthetically pleasing, and encourage an increase in surrounding property values rather than a
182 decrease. Mr. Platt asked and Mr. Aldrich confirmed that the existing structure will be torn down and
183 replaced completely.

184 Mr. Aldrich said that granting the Variance would not be contrary to the public interest because it will sit
185 in the same footprint that it is today, therefore, public interest cannot be compromised.

186 Mr. Aldrich said that denial of the Variance would result in unnecessary hardship per the following: the
187 Zoning Ordinance as applied to the property interferes with the reasonable use of the property.
188 Considering the unique setting of the property in its environment because the lot in question is a legal,
189 non-conforming lot with existing slopes that make it difficult to meet this Ordinance requirement. In
190 addition, all proposed works meet the requirements for the Special Exception as per Section 3.50-I,
191 staying within the requirements specifically speaks to keeping within the spirit of the Ordinance. Mr.
192 Aldrich continued that no fair and substantial relationship exists between the general purposes of the
193 Zoning Ordinance and the specific restriction on the property because the non-conformity of the lot as
194 well as the naturally sloped conditions create a unique situation at this property and for these reasons
195 he was able to meet all the standards within the Zoning Ordinance.

196 Mr. Aldrich said that the Variance would not injure the public or private rights of others because: all
197 proposed work is within the property line limits and, therefore, it will not create any burden to any
198 public or private citizen.

199 Mr. Aldrich said that granting the Variance would do substantial justice because this will allow him to
200 construct a house that is in like kind of the surrounding properties. The proposed scope of work is very
201 similar to three other properties which were approved on the same road this year.

202 Mr. Aldrich said that this use is not contrary to the Spirit of the Ordinance because it will allow him to
203 make the most of the small, non-conforming lot and when determining how to proceed he kept the
204 spirit of the Ordinance in mind. He believes that the proposal is both reasonable and appropriate after
205 researching the Ordinance thoroughly.

206 Mr. Aldrich said that Mr. Landry gave him a copy of another case that was similar to his proposal that
207 was approved with a Variance. Vice Chair Schneider said that each case is individual.

208 Vice Chair Schneider asked if there was anyone in the audience with any questions or comments about
209 the case and there were none.

210 Mr. Platt said that it is hard for the Board to understand what Mr. Aldrich wants to do because they do
211 not have a map of the property and don't have any idea how far away from the lake it is. The sketch is
212 just something Mr. Aldrich did in about two seconds and brought to the meeting, it is not a site plan that
213 the Board can understand. He believes that the requirements do state that if someone is going to tear
214 down a house a boundary survey is required. Mr. Aldrich asked and Mr. Platt said that the requirement
215 is in the Rules and Procedures and he believes that it is on the Variance application as well. Mr. Platt
216 read from the Variance application that "all applications seeking relief from setback requirements on

217 lakefront properties must be accompanied with a professional recorded survey of the property and
218 building location(s).” Mr. Aldrich said that he is not seeking any relief, he is not expanding the footprint.
219 Mr. Platt said that he thinks that the idea is that if you are tearing the building down no one can be sure
220 that it is going back in the same place.

221 Mr. Platt asked Mr. Aldrich why the structure can’t be moved further from the property line and if there
222 are things on the lot that it could not be moved further. Mr. Aldrich said that it would be moving the
223 structure closer to a different neighbor and then they are getting outside the footprint. He tried to keep
224 it simple by tearing something down and putting the exact thing back up, just 10 ft higher.

225 Vice Chair Schneider asked and Mr. Aldrich explained that he does not have a specific plan for the
226 structure because he wanted to see how this application would go before he took on that expense. Mr.
227 Neuwirt said that it drives him crazy that Mr. Aldrich does not have the information that the Board
228 would like to have in order to make an informed decision. The purpose of spending the money to get
229 these documents is to instill confidence in the Board that the building is where it is said it is, the building
230 is going to be torn down and put back. There is an investment on the applicant’s part that has a
231 potential for not paying off. Mr. Neuwirt continued that Mr. Aldrich represents 15 ft on one side and 1
232 ft on the other side of the house. The Board wants to be informed of what is going on and he is
233 frustrated that they don’t have anything. Mr. Aldrich said that he asked Mr. Landry if anything was
234 needed and was told that people do request Variances without plans. Mr. Neuwirt said that Mr. Landry
235 is not the Board.

236 Mr. Platt said that he’d like some more information regarding houses in the neighborhood because Mr.
237 Aldrich said that there are several properties similar to this proposal. Mr. Aldrich said that the house
238 next door to him is just a couple of feet from his property line.

239 Mr. Neuwirt said that the house is basically unencumbered on three sides except for the slope down to
240 the water. There is no reason that Mr. Aldrich could not come in and propose to move the structure
241 four feet or so to show reasonableness by decreasing one of the setbacks. Mr. Aldrich explained to Mr.
242 Neuwirt the layout of the house on the lot and that the clearing on one side of the house is his empty lot
243 and that the neighbor is 2 or 3 ft from the property line on the other side. Mr. Platt said that if the
244 Board had a plan that showed the neighbor’s house and the property lines and the lake Mr. Aldrich
245 could explain the reasoning to keep the house in the footprint. There was further discussion regarding
246 this matter.

247 Mr. Larrow said that he sees this as an incomplete application for the Board to determine that they can
248 approve Mr. Aldrich to do what he wants. It is difficult to discuss the options available and imagine what
249 is taking place based on the drawing submitted. Vice Chair Schneider said that he thinks that what is
250 needed is a survey and plot plan and for Mr. Aldrich to consider moving a bit away from the lot line if he
251 can. He also believes that Mr. Aldrich needs a Special Exception under Section 3.50-I to raise the roof
252 less than 10 ft. Mr. Platt said that he is not sure that he agrees that Mr. Aldrich needs a Special
253 Exception to raise the roof. Mr. Neuwirt said that the Variance is for the proposal to raise the roofline

254 more than 25 ft within the setback that is being encroached on. Vice Chair Schneider said that the
255 Special Exception is to just raise the roof.

256 Mr. Aldrich asked and the Board confirmed that other people do come to meetings with drawings and
257 plans. Mr. Aldrich said that he was misinformed by Mr. Landry. Mr. Platt said that it is an ongoing
258 dialogue that the Board has with Mr. Landry about what they want. Mr. Aldrich said that with the
259 troubles that he had the last time he didn't want to spend thousands of dollars on things and get
260 nowhere which is why he took the time to draw out something himself. There was further discussion
261 regarding this matter.

262 Mr. Neuwirt said that Mr. Aldrich has an opportunity to make the property better and the Board looks at
263 whether they are making the property better or worse, even by reducing the side setback by one foot.
264 The Board needs to see the plans. Mr. Platt said that he does understand the desire to stay within the
265 footprint, but that the house is being torn down. Mr. Aldrich said that he thinks that several Variances
266 would be required if he starts moving things around. There was further discussion regarding this
267 matter.

268 Vice Chair Schneider that they also need a plan showing where the house is located related to the
269 setback because under Section 3.50-k, it says that "if a pre-existing house is located entirely within the
270 50' water bodies setback, additions may be made to the structure provided that the proposed addition
271 is no higher than 25' from the finished grade at its highest point." Mr. Aldrich said that he does not
272 think that would apply as he is not proposing any additions. Mr. Neuwirt said that he thinks that part of
273 Vice Chair Schneider's issue is that they do not know where the house sits.

274 The Board asked Mr. Aldrich if he'd like to continue the case to the next meeting. Mr. Aldrich asked
275 what information the Board requires. The Board said they would like to see a survey showing where the
276 house sits on the lot, where the 50 ft Shoreland setback is and where the 1 ft setback from the lot line is
277 located. Mr. Neuwirt said that he does not know if a house plan is necessary if Mr. Aldrich is stating that
278 the house is going to be on the same footprint.

279 Vice Chair Schneider asked why the house has to be 31 ft as opposed to 25 ft and Mr. Aldrich said that
280 he'd like to get another floor out of the space. There was further discussion regarding this matter.

281 The Board asked and Mr. Aldrich confirmed that he'd like to continue the hearing. Vice Chair Schneider
282 said that he thinks that Mr. Aldrich also needs to apply for a Special Exception just for raising the roof
283 less than 10 ft. Vice Chair Schneider asked and Mr. Larrow said that he believes that the Board should
284 approve continuing the case. Mr. Aldrich asked and the Board confirmed that he needs a professionally
285 done site plan with accurate information as to where the building sits on the lot, including the side, front
286 / road and waterfront setbacks as well as anything on the lot that may affect the ability to move the
287 house.

288 Mr. Platt made a motion to continue Case #16-27: Parcel ID: 0118-0007-0000: seeking a Variance of
289 Article III, Section 3.10 until the November Zoning Board hearing. Mr. Larrow seconded the motion. The
290 motion passed unanimously.

291 **CASE #16-31: PARCEL ID: 0126-0023-0000: ADMINISTRATIVE APPEAL: SEEKING APPROVAL OF**
292 **APPEALING THE TOWN OF SUNAPEE SELECTMEN'S APPROVAL OF BUILDING PERMIT #3516, 23 OLD**
293 **NORCROSS LN, MICHAEL JESANIS.**

294 Michael Jesanis said that when he spoke with Vice Chair Schneider he thought that the meeting was
295 being continued to October 27th and he has a scheduling conflict on the 25th and asked if there is any
296 flexibility with the date. Vice Chair Schneider said that the regularly scheduled meeting is the second
297 Thursday in November. Mr. Jesanis said that he is available for that meeting. Vice Chair Schneider said
298 that he will discuss it with the Zoning Administrator and get back to him and apologized for Mr. Jesanis
299 not being informed about the continuance.

300 **CASE #16-28: PARCEL ID: 0234-0024-0000: SEEKING APPROVAL OF AN EQUITABLE WAIVER OF**
301 **DIMENSIONAL REQUIREMENTS FROM ARTICLE III, SECTION 3.40 (J) TO ALLOW A PREVIOUSLY**
302 **CONSTRUCTED RETAINING WALL HIGHER THAN 42 IN AND NOT MEETING FRONT YARD SETBACK TO**
303 **REMAIN, WALL WAS CONSTRUCTED WITHOUT A VARIANCE. KATHLEEN & THOMAS BOUWKAMP, 137**
304 **NEW PROVINCE RD.**

305 **CASE #16-29: PARCEL ID: 0234-0024-0000: SEEKING APPROVAL OF AN EQUITABLE WAIVER OF**
306 **DIMENSIONAL REQUIREMENTS FROM ARTICLE III, SECTION 3.40 (L) ALLOWING CONSTRUCTION SITE**
307 **TO REMAIN INTACT. THE SITE WAS CREATED ON A SLOPE WHICH EXCEEDED 25% WITHOUT**
308 **OBTAINING A VARIANCE. KATHLEEN & THOMAS BOUWKAMP, 137 NEW PROVINCE RD.**

309 **CASE #16-30: PARCEL ID: 0234-0024-0000: SEEKING APPROVAL OF A VARIANCE OF ARTICLE III,**
310 **SECTION 3.10 TO REDUCE THE FRONT SETBACK FROM A CUL-DE-SAC RIGHT-OF-WAY TO 24.2 FT.**
311 **KATHLEEN & THOMAS BOUWKAMP, 137 NEW PROVINCE RD.**

312 Vice Chair Schneider said that all the cases will be heard together and the Board will vote on them
313 separately.

314 Harry Seidel, Donald Holmes, Thomas Bouwkamp, and Kathleen Bouwkamp presented the merits of the
315 cases.

316 Vice Chair Schneider said that there are only four Board members present and the applicants need three
317 out of the four votes for an approval or denial and asked the applicants if they would like to proceed
318 with the cases or continue them. Mr. Seidel said that have decided to proceed with the case.

319 Mr. Seidel presented a letter from Denis and Karen Ibey, abutters to the property. Mrs. Ibey is at the
320 meeting, however, he is not sure she can stay.

321 Mr. Seidel gave a copy of the original subdivision plan to the Board as it may help them with the
322 Variance.

323 Vice Chair Schneider asked and Mrs. Ibey said her property is at 134 New Province Rd, and showed the
324 Board the location on the plan.

325 Mr. Seidel said that the request for the Equitable Waiver for the retaining wall is for Article III, Section
326 3.40-(j), as the already constructed retaining wall is over 42 inches and is closer than the front setback
327 requirement.

328 Mr. Seidel said that the Bouwkamps bought the property in 2005. The property has a long, narrow
329 driveway that is close to the property line on the east side and there is a lot of land behind the property
330 with land that is fairly steeply sloped on the south side, the left side of the driveway. Mr. Seidel
331 continued that the Bouwkamps had an old NH private dump site on their property with parts of cars,
332 refrigerators, and trash. When the subdivision was built, the developer took all the large rocks and
333 boulders and pushed them into that same area. The Bouwkamps inherited a dump that was strewn with
334 large boulders. Vice Chair Schneider asked and Mr. Bouwkamp said that they were not aware when
335 they purchased the property that they were buying a dump and they were surprised when they were
336 pulling things out.

337 Mr. Larrow asked and Mr. Platt said that the subdivision was done in the 1980's. Mr. Platt asked and
338 Mr. Seidel said that the Bouwkamps built the house.

339 Mr. Seidel said that two years ago the Bouwkamps hired a surveyor, Allen Wilson, to establish the
340 property lines and clean up the dump. They surveyor did not do any actual surveying and this summer
341 the contractor, Mr. Holmes, came and they started excavating and taking the large pieces of trash away
342 and cleaning up the boulders. A retaining wall was built and they got to the point where they created a
343 buildable area and shortly after that the surveyor finished his work. Mr. Seidel continued that after
344 everything was cleaned up, it became apparent that the grade in the area was between 20% and 30% so
345 they were in violation of the Ordinance.

346 Vice Chair Schneider asked and Mr. Seidel gave the Board copies of the survey.

347 Mr. Holmes said that they never had the actual contour lines because it was a rubble field. In the
348 process of cleaning up they were able to establish what the existing grade was underneath.

349 Vice Chair Schneider asked about the maximum height of the retaining wall. Mr. Holmes said that
350 measuring on the slope, the side from the highest point to the lowest point is 24 ft. Vice Chair Schneider
351 asked if the survey was done before or after the wall was built. Mr. Seidel said that he started calling
352 the surveyor and he started showing up more often and started taking care of things as they were doing
353 the wall. They wanted to fit the barn in there and have it be as much away from the setback as possible.
354 Vice Chair Schneider asked and Mr. Seidel said that Beaulieu Enterprises out of Croydon, NH built the
355 wall.

356 Vice Chair Schneider asked when the wall was constructed if a permit was requested. Mr. Seidel said
357 that they did not apply for a permit at that time. Mr. Holmes said that his purpose was to clean up the
358 property and see what was there and with the area looking good and with the equipment there they
359 built the wall. Vice Chair Schneider said that looking good is an aesthetic thing. Mr. Holmes said that
360 they produced a viable building site that will support what they are trying to do.

361 Mr. Larrow asked if they were moving the boulders around to determine if there was a site to build on
362 without a Variance. Mr. Seidel said that the Bouwkamps wanted to build the barn and had looked at
363 places on the site and there were no other areas that were workable. This was the only place that did
364 not have wetlands or a steeper slope than this area.

365 Mr. Seidel said that he was called because there was an issue with the setback from the right of way and
366 he did not get a site plan with the topography until about a week later when he determined that they
367 have a steep slope issue. Mr. Neuwirt asked when they knew they needed to come before the Board.
368 Mr. Seidel said that he was called by Mr. Holmes because they knew that they had a structure that was
369 within the 50 ft setback and needed a Variance. He then realized the steep slope issue and the issue
370 that the boulder wall is too close to the setback. Mr. Holmes said that he thought that what they were
371 doing was doable but they didn't have the survey done.

372 Mr. Platt said that the steepest part of the wall is not within the setback, though it may exceed 42 in
373 before the setback. Mr. Holmes said that it was tough to determine because there was some blasted
374 ledge that was on top with weeds and things.

375 Mr. Seidel said that the wall was built with filter fabric and 20 ton vibratory roller at each lift so it is
376 solidly built. They have created a stable, useful building site, however, they have a violation of the steep
377 slope and the front setback. Mr. Platt asked and Mr. Seidel said that the slope is between 20% and 30%.
378 The steepest slope that he found was 28% towards the back of the setback area. Behind the wall is a 4
379 in drainage pipe to pick up moisture and water and it drains through the wall.

380 Mr. Seidel said that he thinks the Bouwkamps did the right thing cleaning up the dump and that they
381 made an area where they could build a storage structure. They hired a good contractor to do the job
382 and the retaining wall that was built was done with boulders that were on the site, no rocks were
383 brought to the site. The wall is well laid out and well-constructed and has drainage in it and filter fabric
384 to prevent material to go through the wall. They have done a good job with temporary erosion control
385 measures to try to keep any silt that might be on the site to get into the gully which is on the rear of the
386 property. The property still has many boulders on both sides of the area.

387 Mr. Holmes said that if they can get over all the hurdles they want to improve the site and bring up the
388 fittest grade so they can control the runoff from the structure and the site. Mr. Seidel said that the
389 runoff from the roof of the building will be guttered off the building into the ground and discharged
390 elsewhere. The site water will be diverted to a sediment basin, which is shown on the drawing to be on
391 the south end of the retaining wall. Mr. Neuwirt said that does not relate to anything the Board needs
392 to determine because they are not in the setback. Mr. Seidel said that they are preserving the integrity
393 of the area.

394 The Board opened the hearing up to comments and questions from abutters.

395 Mr. Bouwkamp said that before they had the survey done they did the best they could with 100 ft
396 measuring tapes and there is a drivable cul-de-sac, which was noticeable. They went from the edge of
397 the cul-de-sac to where the edge of the barn would be and it was 75 ft to 80 ft. The drivable cul-de-sac

398 is 100 ft across, however, the surveyed cul-de-sac is 200 ft across. They were surprised to find it that
399 much bigger, however, they are in a Rural Residential Zone and in order for them to get subdivision
400 approval in that Zone they needed to have 100 ft of frontage, which meant they needed to make the
401 circle bigger. They are not 25 ft from the drivable cul-de-sac, they are 25 ft from the surveyed cul-de-
402 sac. Mr. Larrow asked and it was confirmed that you can clearly see where the drivable part is and that
403 it is far away.

404 Steve Bourque, 127 New Province Rd, said that there is a section that gets plowed right into the ravine.
405 He is has spoken to the Bouwkamps and they are not really going to see anything.

406 Vice Chair Schneider asked and Mr. Bouwkamp said that they did not have any intention of installing a
407 fence along the edge of the property but they are open to doing that.

408 Mike Terry, 85 Hansen Chase Rd, said that he is an abutter and this is at the rear of his property and it is
409 not something that he sees. He thinks that it will fit with the neighborhood well and he does not have
410 any objections to the proposal, however, it will impact him the least.

411 Mrs. Ibey said that neither she nor her husband have any issues with the proposals.

412 Vice Chair Schneider asked and Mr. Bourque confirmed that he is on the wall side of the property.

413 Vice Chair Schneider said that he thinks that the Board should consider if they would have approved the
414 Variance had it been presented to them.

415 Mr. Holmes said that it was difficult to see what they could have and they needed to move some of the
416 rubble to see what was under it to get to the original grade and see if there was anything that could
417 have been done there.

418 Mr. Larrow said that usually when the Board gets a request someone hasn't done it already, it has been
419 tested and then they see if it will work for the Town instead of asking for an equitable waiver.

420 Mr. Larrow asked if the building has to be the proposed size in relation to the setbacks. Mr. Seidel said
421 that the Bouwkamps wanted to put their RV in the building, which is why the main part is 28 ft wide and
422 34 ft deep. The back part of the building, which is towards the deepest part of the wall, shows one big
423 rectangle of 28 ft by 44 ft, but the back 10 ft is a carport. The loading on the site is much more towards
424 the center of the site. There was further discussion regarding the barn.

425 Mr. Larrow asked if they can enhance the front setback as well as the side. Mr. Holmes said that the
426 reason the barn is angled the way it is shown is to try and keep it as far from the setbacks as possible
427 while keeping the structure on the original soil; it is tight to the driveway and turned. Mr. Larrow
428 discussed some options of changing the building.

429 Mr. Platt said that he thinks that two years ago the setback from a cul-de-sac was changed and Mr.
430 Landry used to view it as a side setback and they changed it to be the edge of the right of way so this
431 means that the setback is 25 ft longer than anyone else's. Mr. Seidel said that there are many people

432 who have this type of issue, such as those on a corner, and he believes Mr. Landry is going to suggest a
433 Zoning change regarding this matter.

434 There was further discussion regarding the wall and that you cannot really see it from the road and that
435 is isn't that high closer to the road and the setback.

436 Vice Chair Schneider said that in the Rural Residential Zone it is a 75 ft setback. Mr. Platt said that the
437 setback is 75 ft from Route 11 and in the Rural Lands Zone. Mr. Platt said that it does require 100 ft of
438 frontage, not 97.5 ft.

439 Vice Chair Schneider asked and Mr. Seidel said that the drivable part of the cul-de-sac shown on the plan
440 by Bristol Sweet is 80 ft in diameter with a 40 ft radius but he thinks it was built to be 65 ft to 70 ft.

441 Mr. Neuwirt asked the Board if they were to hear the cases without a wall / structure already there how
442 they would feel about it. Mr. Platt asked and Mr. Seidel said that there isn't another place to put the
443 barn on the property as there are wetlands on both sides of where the house is.

444 Mr. Seidel said that the barn will not be detrimental to the property values in the neighborhood as it will
445 be a beautiful building, set back from a lightly traveled road, and well screened. There are only two
446 properties off the end of the cul-de-sac so there won't be a big visual impact. Erosion control measures
447 are being put in to protect the wet areas behind the barn. Mr. Seidel continued that to him a Setback
448 Ordinance is to protect the Town and have a sense of not being too dense and too much congestion.
449 The building is well screened and well back so the purpose of the Ordinance is not being sacrificed by
450 allowing the owner this use of the property. From a Zoning standpoint he thinks that substantial justice
451 will be done because there is not a public loss from allowing this proposal, but there is a use of property
452 for this land owner as there is no other place on the lot. Mr. Neuwirt agreed that the Zoning
453 Regulations are put in place to preserve a rural character. There was further discussion regarding this
454 matter.

455 Mr. Neuwirt asked if Mr. Seidel has answered the criteria and Mr. Platt said that he thinks that he has
456 shown hardship with the location of the cu-de-sac right of way being so far from the road and that there
457 is no other place on the site to build.

458 Mr. Neuwirt asked how the cases need to be addressed and Mr. Platt said that he thinks the Board
459 should vote on them individually. Mr. Neuwirt asked if Mr. Seidel is responsible for presenting the
460 criteria for the equitable waivers, and then the Special Exception as it has been a mishmash of
461 conversation. Mr. Larrow said that he thinks that everything has been covered in the individual cases
462 but he thinks the Board should address each case separately.

463 Mr. Neuwirt said that he only issue he has, which is not a Zoning issue, is that as a builder he'd be
464 nervous about building there as the slope has a couple of things going against it as the amount and type
465 of fill used as a huge impact on its stability. Mr. Neuwirt went into more detail regarding his concerns
466 though he does not have an issue with the proposal. Mr. Seidel said that whenever you build a tall wall
467 the forces are complicated and if the wall is straight it becomes a lot more complicated. A wall that has

468 a curve like this one does is better. Mr. Neuwirt said that, not being an engineer, he wants to be sure
469 that the applicants know the level of compaction that they have to make sure that the building doesn't
470 slide down the hill. Mr. Platt said that he does not think that this is part of the Board's approval. Mr.
471 Seidel said that is why they are pulling it so close to the existing driveway. Mr. Neuwirt said that without
472 an engineering background it is difficult to understand the forces at work. He thinks that the project is
473 great and he thinks that if they had asked for the Variance he would have asked them to look at
474 everything and Vice Chair Schneider made a great point about the safety issue with the wall and asked if
475 they can require a fence. Mr. Holmes said that the Bouwkamps are in favor of putting a fence around
476 the wall. Mr. Platt said that he does not think that the Board can take any responsibility for the stability
477 or safety of the wall.

478 Mr. Seidel said that when Mr. Neuwirt visited the site he had a sobering thought about the wall and
479 called an engineer. The engineer gave him the name of a geo-technical engineer named Harry
480 Weatherbee. He described everything to him and Mr. Weatherbee said that a large rubble / boulder
481 wall, if well-built can be very strong, however, you cannot apply science or logic to the wall because it
482 does not have any rebar or concrete. You also cannot apply the logic of a slope so you cannot analyze it
483 logically. The government now has created guidelines and they could hire Mr. Weatherbee to give an
484 opinion on whether the wall complies with the guidelines. Mr. Seidel continued that Mr. Weatherbee
485 asked how the wall was constructed and he explained that Mr. Beaulieu did it and Mr. Weatherbee
486 knows him and he mentioned the vibratory roller and Mr. Weatherbee said that he feels pretty good
487 about the wall.

488 Vice Chair Schneider closed the meeting to public input.

489 Mr. Larrow asked if the Board was going to put a condition in their approval about getting an engineer
490 to look at the wall. The Board felt as though it is not a Zoning issue. Mr. Neuwirt said that he has more
491 of an issue with the safety of the wall than he does about the application. Mr. Platt said that he does
492 not think that an engineer can give a stamp of approval on the wall. Mr. Larrow asked and Mr. Seidel
493 explained that Mr. Weatherbee could write a recommendation about the wall, not give a stamp of
494 approval. Mr. Holmes asked and Mr. Seidel said that Mr. Weatherbee would charge a couple of
495 thousand dollars to do the work. Mr. Seidel said that if it was a requirement he think that the
496 Bouwkamps would do it, however, he does feel good after talking to Mr. Weatherbee. Mr. Platt said
497 that he could see the requirement if this was along the road and a public safety issue but where he is he
498 does not see it as a hazard to any neighbors. Mr. Seidel said that this is a storage building and there are
499 different requirements for different buildings.

500 Mr. Platt made a motion to approve Case #16-28: Parcel ID: 0234-0024-0000: seeking approval of an
501 Equitable Waiver of Dimensional Requirements from Article III, Section 3.40 (j) to allow a previously
502 constructed retaining wall higher than 42 in and not meeting front yard setback to remain, wall was
503 constructed without a Variance., Kathleen and Thomas Bouwkamp, 137 New Province Rd. Mr. Larrow
504 seconded the motion. The motion passed unanimously.

505 Mr. Platt made a motion to approve Case #16-29: Parcel ID: 0234-0024-0000: seeking approval of an
506 Equitable Waiver of Dimensional Requirements from Article III, Section 3.40 (I) allowing construction site
507 to remain intact. The site was created on a slope which exceeded 25% without obtaining a variance,
508 Kathleen and Thomas Bouwkamp, 137 New Province Rd. Mr. Larrow seconded the motion. The motion
509 passed unanimously.

510 Mr. Neuwirt made a motion to approve Case #16-30: Parcel ID: 0234-0024-0000: seeking approval of a
511 Variance of Article III, Section 3.10 to reduce the front setback from a cul-de-sac right-of-way to 24.2 ft,
512 Kathleen and Thomas Bouwkamp, 137 New Province Rd. Mr. Platt seconded the motion. Vice Chair
513 Schneider said that they should make the approval conditional on it being a storage building as per the
514 plans presented to the Board. Mr. Neuwirt amended his motion to approve Parcel ID: 0234-0024-0000:
515 seeking approval of a Variance of Article III, Section 3.10 to reduce the front setback from a cul-de-sac
516 right-of-way to 24.2 ft, Kathleen and Thomas Bouwkamp, 137 New Province Rd to erect a storage
517 building as per plans submitted with the application. Mr. Platt seconded the amendment and said that
518 he thinks that the hardship is the strange right of way and that the fact that the rest of the lot is steep
519 and wet and this is the most appropriate place to build the garage. The motion passed unanimously.

520 MISCELLANEOUS

521 Mr. Platt said that he thought that postponing the Old Norcross Road hearing to the October 25th
522 meeting was done by Mr. Jesanis and the owners of the property but he is concerned because the
523 neighbor's construction has stopped. Vice Chair Schneider said that Mr. Landry made the decision to
524 postpone the hearing and he talked to the builder. Mr. Platt said that he thinks that postponing the
525 hearing another two weeks is essentially postponing the neighbors from commencing with their building
526 permit, which has been issued by the Town. He is not 100% comfortable postponing the meeting for
527 two more weeks, the Board has approved a motion to postpone the meeting until October 25th. If the
528 Board gets to the meeting on October 25th and decides to continue the hearing they can vote then. The
529 Board discussed that they did not vote on changing the hearing until November when Mr. Jesanis
530 interrupted the meeting to say that he was not going to be available for the 25th. Mr. Platt said that if
531 they continue the case for two or three months it could be a problem. Vice Chair Schneider said that he
532 will get in touch with Mr. Jesanis and inform him that the hearing is not officially continued as the Board
533 did not vote on it. There was further discussion regarding this matter as Vice Chair Schneider said that
534 he told Mr. Jesanis that he would get back to him, not that the case would be continued to the
535 November meeting.

536 MINUTES

537 Changes to the minutes from the September 8, 2016 Zoning Board Meeting: Vice Chair Schneider was
538 absent from the meeting. Change "Ms. Hanken-Birke" to "Attorney Hanken-Birke" throughout the
539 minutes. Change Line 20 to 21 to read "They met with Diane Forest from DES and the requested
540 information was submitted last Friday." Change Line 28 to read "...Alex Kish had hung out..." Change
541 Line 43 to read "...an attached and stand alone garage..." Change Line 56 to read "...with the Board. This
542 was read..." Change Line 67 to read "...boat works and the former Chase Marine Property." Change Line

543 72 to read "... Mrs. Albee indicated that they did." Change Line 73 to read "...inventory in stock. Mr.
544 Larrow stated that their website indicates more commercial activity." Change Line 95 to read "...the
545 Albees need room..." Change Line 101 to read "...Mr. White and Attorney Hanken-Birke. Mr. Simpson
546 asked for a..." Change Line 117 to read "...Dick Theland, Dee Hawkin..." Change Line 122 to read
547 "...traffic at all hours. He stated that..." Change Line 130 to read "...contributions the Albee's make..."
548 Change Line 138 to 139 to read "...felt the conditions of meeting the spirit of the Ordinance or hardship
549 had not..." Change Line 163 to read "...something she and her usband had wanted to do for a long time
550 but they just never got around to doing." Change Line 164 to read "Mrs. Leavitt then read..." Change
551 Line 166 to read "There was a question from the board..." Change Line 168 to read "... other lots on
552 Piney Point Road." Change Line 207 to read "...would be a permitted use..." Change Line 223 to read
553 "Mr. Neuwirt addressed section 7..." Change Line 267 to read "Chairman Frothingham asked if the
554 applicant wanted..." Change Line 290 to read "Mr. Horan discussed that his parents..." Change Line 296
555 to read "...the properties along Lake Ave..." Change Line 318 to read "Chairman Frothingham said that
556 the Board..." Change Line 320 to read "Dan Schneider who..." Change Line 324 to read "...towns keep
557 less accurate and dense minutes that Sunapee does. Mr. Landry said that their minutes..."

558 Mr. Platt made a motion to approve the minutes, Mr. Larrow seconded and the motion was approved
559 with three in favor and one abstention.

560 Mr. Larrow made a motion to adjourn the meeting at 9:32 pm. Mr. Platt seconded the motion. The
561 motion passed unanimously.

562

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564

565

566 Daniel Schneider

Aaron Simpson

567

568 Clayton Platt

William Larrow

569

570 George Neuwirt